

ATTENTION!

**YOU MUST RECEIVE PRIOR APPROVAL FROM ADE BEFORE EXECUTING ANY
CONTRACT EVEN IF YOU USE THIS PROTOTYPE**

**ARTICLE I
INTRODUCTION**

- 1.1 Date of and Parties to the Agreement. This agreement, dated _____, is between [SPONSOR NAME], hereafter called the Local Education Agency (LEA) and [FOOD SERVICE MANAGEMENT COMPANY NAME] (the FSMC).
- 1.2 Purpose of Agreement. This agreement sets forth the terms and conditions upon which the LEA retains the FSMC to manage and operate the LEA's food service for the LEA's students, employees, visitors, and guests.
- 1.3 Term of the Agreement. The initial term of this agreement commences on _____, and continues until _____ [this date may be no more than one year from the date the agreement commences]. The agreement is subject to four (4) additional one-year renewals upon the consent of both parties, unless terminated earlier as provided in the Article concerning General Terms and Conditions. §210.16 (d)

**ARTICLE II
RELATIONSHIP OF THE PARTIES**

- 2.1 Limited Agency. The LEA retains the FSMC as the exclusive agent to purchase food and manage the daily operations of the LEA's food service program as described in this agreement.
- 2.2 Responsibilities of Agent.
 - A. As agent, the FSMC shall prepare and serve a variety of high quality, wholesome, and nutritious food and beverages for students, faculty, staff, employees, and others as designated by the LEA in accordance with the terms and conditions of this agreement and the Arizona Nutrition Standards pursuant to Arizona Revised Statute 15-242 effective July 1, 2006.
 - B. The FSMC agrees that it will perform the work described in this agreement in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal or state regulatory body or governmental agency.
 - C. The FSMC agrees to meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this agreement.
 - D. The FSMC agrees to assume full responsibility for the payment of all contributions, assessments, both state and federal, as to all employees engaged by it in the performance of this agreement.
 - E. The FSMC agrees to furnish the LEA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.

2.3 Rights of Principle.

- A. As principle, the LEA shall supervise and retain control of the FSMC's daily operation of the food service described in this agreement; retain control of the quality, extent, and general nature of the food service operation; and establish all program and non-program meal and a la carte prices. Authorized representatives of the LEA shall have access to all portions of the food service facilities at all times, and shall monitor the performance of the FSMC under this agreement through periodic on-site visits. § 210.16(a)(2)(3)(4).
- B. The LEA may make reasonable regulations with regard to all matters under its supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given.
- C. The LEA shall retain control of the school food service account and overall financial responsibility for the school nutrition program. § 210.9 (b)(1) and 210.16 (a)(4).
- D. The LEA shall retain signature authority on the Child Nutrition Program Food Services Agreement, Free and Reduced Price Policy Statement, and all claims for reimbursement. § 210.9(b)(8) and 210.16(a)(5).
- E. The LEA shall retain signature authority and be responsible for all contractual agreements entered into in connection with the school nutrition program. § 210.21.
- F. The LEA shall ensure resolution of program review and audit findings. § 210.9(b)(17).
- G. The LEA shall establish an advisory board composed of parents, teachers, and students to assist in menu planning. § 210.16(a)(8).
- H. The LEA shall maintain applicable health certification and be assured that the FSMC is meeting all state and local regulations in preparing and serving meals at the facilities. § 210.16(a)(7).
- I. The LEA shall develop, distribute, and collect the parent letter and application for free and reduced price meals. § 245.6.
- J. The LEA shall determine eligibility and verify applications for free and reduced price meals benefits and will conduct any hearings related to such determinations. § 245.6, 6a, 7, 10.
- K. The LEA shall assure that the maximum amount of USDA donated foods are received and utilized by the FSMC. § 210.16(a)(6).
- L. The LEA shall maintain responsibility for utilizing processing agreements from the approved state contract, private storage facilities, or any other aspect of financial management relating to commodities. § 250.15(a).
- M. The LEA shall ensure compliance with the new Federal legislation requiring a food safety management system that complies with the Hazard Analysis and Critical Control Point (HACCP) principles or meets USDA guidance established before the SY 2006-2007.
- N. The LEA shall ensure compliance with the new Wellness Policy requirements established before SY 2006-2007.

ARTICLE III
FOOD SERVICE PROGRAM

- 3.1 Location. The FSMC shall prepare and serve meals for the schools listed in Appendix _____. The LEA and the FSMC may agree to add other locations.
- 3.2 Calendar. All meals will be provided in accordance with the approved calendar, attached as Appendix _____. For the first twenty-one (21) days of food service, FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the LEA. Changes in the menu may be made later with approval of the LEA. § 210.16 (b)(1).
- 3.3 Meal Program. The FSMC shall provide nutritional, high-quality breakfasts, lunches, snacks, milk service, a la carte food (in order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children per § 210.16 (a)), and vending items **[delete any items not applicable]** in accordance with the following terms:
- A. All reimbursable lunches, breakfasts and snacks shall meet the qualifications for USDA reimbursement as described in § 210.10, and 220.8 , et seq.
 - B. All full lunches, breakfasts and snacks served under the Summer Food Service Program shall meet the qualifications for USDA Reimbursement as described in § 225. **[delete if not applicable]**
 - C. All reimbursable milks shall meet the qualifications for USDA reimbursement under the Special Milk Program as described in § 215. **[delete if not applicable]**
 - D. The LEA shall administer the application process for all free and reduced price meals, and shall establish and notify parents and guardians of program criteria for eligible students. Both the LEA and the FSMC shall be responsible for protecting the anonymity of students receiving free or reduced price meals.
 - E. The FSMC shall collect gross sale receipts, on behalf of the LEA, for cash-paid meals, a la carte items, and vending items. Gross cash receipts shall be turned over daily to the LEA.
- 3.4 Nutrition Awareness Programs. In cooperation with the LEA, the FSMC shall conduct on-going nutrition awareness programs for students, teachers, parents, and other interested parties.
- 3.5 Special Diets. The FSMC shall supply special diets for students where medically necessary and when prescribed and approved in writing by the LEA and a licensed physician.
- 3.6 Food Committee and Advisory Board. The FSMC shall cooperate with the LEA's Food Service Advisory Committee, consisting of students, parents, and LEA staff in developing menus and other food service programs.
- 3.7 Catering. Upon request by the LEA, the FSMC shall provide catered food service at times and prices mutually agreed upon **[delete if not applicable]**. For all LEA sponsored and third party functions catered by the FSMC, the FSMC shall prepare and submit prenumbered invoices to appropriate administrators of the LEA and representatives of third party organizations, which shall pay the LEA directly. Such invoices will be submitted by the FSMC by the end of the current month. Any invoice payments received by the FSMC

shall be immediately delivered to the LEA's Accounting Department. Costs of catered functions shall not be supported by the nonprofit foodservice account funds. **The FSMC shall separate food and labor costs from non-catering functions.** The LEA shall be responsible for collecting amounts due on food service accounts receivable invoices. The FSMC shall provide the LEA with copies of invoices and an invoice control log within ten (10) days after the end of each month.

- 3.8 Environmental Protection Agency Compliance. In performance of this agreement, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 117389, and EPA Regulations 40 CFR Part 15, et seq. Environmental violations shall be reported to the United States Department of Agriculture and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's "List of Violating Facilities." §3016.36(i)(12)
- 3.9 Energy Policy and Conservation Act Compliance. The LEA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act. §3016.36(i)(13)
- 3.10 Contract Work Hours and Safety Standards Act Compliance. In performance of this agreement, and as employer for all management food service employees, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act. §3016.36(i)(6)
- 3.11 Debarment Certification. The FSMC shall complete and submit to the LEA the US Department of Agriculture Certification Regarding Debarment. The certification must accompany the four (4) additional one-year renewals. §3017.510.
- 3.12 Lobbying. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities to the LEA. §3018.
- 3.13 Health Certification. The FSMC shall maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the LEA facility(s).
- 3.14 Equal Employment Opportunity. The FSMC shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 3.15 Certification of Independent Price Determination. The LEA and FSMC ensure compliance regarding non-collusion.

ARTICLE IV MANAGEMENT AND PERSONNEL

- 4.1 FSMC Management and Professional Employees. The FSMC shall provide sufficient and qualified management and professional employees to manage the food service operations and supervise all employees employed therein.
- 4.2 Non-Management Employees. **[delete if not applicable]** All non-management food service employees shall be employees of the LEA. The FSMC managers shall direct and supervise LEA food service employees.

- 4.3 Student Workers. **[delete if not applicable]** The LEA has a policy of providing work experience for its students as part of the educational curriculum. In furtherance of that policy, the LEA may assign students for work in the food service operation in such numbers as are agreed upon between the LEA and the FSMC.
- 4.4 Payroll and Taxes. The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including any income, social security, and unemployment taxes and workers' compensation payments.
- 4.5 Workers' Compensation Insurance. The FSMC shall procure Workers' Compensation Insurance or shall maintain a system of self-insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the LEA.
- 4.6 Nondiscrimination. Neither the LEA nor the FSMC shall, unless otherwise made inapplicable by law, discriminate on the basis of race, color, gender, religion, sex, age, national origin, disability, political beliefs, sexual orientation, marital or family status, or status as a Vietnam veteran, as defined by applicable federal, state, and local law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning food service personnel.
- 4.7 Fingerprinting Requirements. The FSMC or LEA **[delete if not applicable]** shall be responsible for obtaining any necessary fingerprint clearances for its employees as required by law. The FSMC shall provide all necessary forms and/or documentation for such employees to the LEA. A.R.S. § 15-512-13

ARTICLE V INVENTORIES, FACILITIES, EQUIPMENT, AND MAINTENANCE

- 5.1 Inventories of Food and Supplies. Prior to the commencement of the term of this agreement, the existing food and operational supplies shall be delivered without charge to the FSMC for the performance of this agreement. The cost of food and operational supplies ordered by FSMC on behalf of the LEA in performance of this agreement shall be paid for by the FSMC and the FSMC shall then be reimbursed for those costs incurred. The inventory of food and operational supplies shall remain the LEA's property. These purchases must be made using the same competitive procurement procedures applicable to the LEA. The prices charged to the LEA must be fair and reasonable **and shall include net allowable costs for any rebates or credits for FSMC purchases.**
- 5.2 Buy American. Requires purchases to the maximum extent practicable be domestic commodities or products. §210.21 (d)(2)
- 5.3 Smallwares. The LEA shall furnish the necessary smallwares, including trays, dishes, glassware, flatware, serving utensils, and the like.
- 5.4 Office Facilities. The LEA shall provide, without cost to the FSMC, suitable office facilities, including furniture and equipment, for use by the FSMC in performance of this agreement. The FSMC shall take reasonable care of the office facilities and equipment, and shall return them to the LEA in good condition upon termination of this agreement, ordinary wear and tear excepted.
- 5.5 Sanitation. The FSMC shall be responsible for usual and customary cleaning and sanitation of the LEA's food service facilities.

- A. The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items.
 - B. The LEA shall be responsible for the required cleaning and maintenance of dining areas and snack bar seating areas beyond the front edge of the serving lines, as well as periodic cleaning of all ceilings, ceiling fixtures, air ducts, and hood vent systems (as per local ordinance). The LEA shall also provide and maintain adequate fire extinguishing equipment for food service areas, provide necessary pest control, and shall be responsible for the removal of refuse from refuse collection centers.
 - C. If the LEA is unable to perform any of its responsibilities described in subparagraph B above, the FSMC shall temporarily assume those responsibilities and shall bill the LEA for any costs incurred.
 - D. The FSMC shall be responsible for complying with all applicable federal, state, and municipal laws related to food preparation and sanitation and all rules and regulations promulgated thereunder. The LEA shall be responsible for compliance relating to structural and equipment matters. § 210.16 (c) (2).
- 5.6 Maintenance. The LEA shall provide, at the LEA's expense, maintenance personnel and outside maintenance services, parts, and supplies required to properly maintain the food service facilities and equipment. If the FSMC is required by an outside maintenance service to make payment at the time of service, the LEA shall reimburse the FSMC for such payments made.
- 5.7 Condition of Facilities and Equipment. The LEA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this agreement shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the LEA's premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the LEA of such notification.
- 5.8 Transportation Equipment and Vehicle. The LEA shall provide transportation vehicles and equipment to be used in the food service program. Maintenance, fuel, insurance, and equipment for transportation shall be the responsibility of the LEA. **[delete if not applicable]**
- 5.9 Nonconforming Facilities and Equipment. Each party shall, at no cost to the other, make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of premises or owned equipment which violate applicable building, sanitation, health, safety law, ordinance, rule or regulation.
- 5.10 Utilities. The LEA shall, at its sole costs and expense, provide all utilities, including without limitation, proper lighting, electricity, gas, water (hot and cold), and telephone service, necessary for the FSMC to provide services pursuant to the terms of this agreement. The FSMC shall exercise due diligence with respect to using only those utilities absolutely necessary to efficiently conduct food service operations.

ARTICLE VI
FINANCIAL AND PAYMENT TERMS

6.1 Billing for Reimbursements, Commissions, and Management and/or Administrative Fees.

The FSMC shall submit supporting documents and invoice the LEA monthly for the following direct, actual costs and management and/or administrative fees:

- A. The actual and direct costs for the wages, taxes, and benefits of the food service director and other management employees on the FSMC's payroll.
- B. Direct operating costs paid by the FSMC arising from performance of this agreement.
Direct operating costs are defined as:
 - Food and supply purchases by the FSMC necessary to perform this agreement
 - Food service program travel and mileage costs incurred
 - Advertising and promotions within the LEA
 - The FSMC's insurance necessary for performance of this agreement **[delete if not included as part of the bidding/proposal process]**
 - Service business and occupation tax
 - Employee training and development costs
 - Laundry, linen, and uniforms
 - Licenses and permits for performance of this agreement
 - Commodity delivery charges and storage rental
- C. A per meal charge for all meal and meal equivalents based upon the following scale for FSMC's management fee. **[delete if not applicable]**
- D. A per meal charge for all meal and meal equivalents based upon the following scale for FSMC's Administrative fee. **[delete if not applicable]**
- E. A per month fixed charge of XXX thousand, XXX hundred and XX dollars (\$X,XXX.00), twelve (12) months per year for the FSMC's Administrative fee. **[delete if not applicable]**

The following functions are the FSMC's responsibility, and will be included in such fees:

- Corporate supervision
- Financial reporting and analysis
- Field auditing
- Marketing Assistance
- Purchasing administration

Note: Another type of pricing option is a fixed fee that includes all related costs such as labor, food and any fees charged by the management company.

- F. Per Meal Equivalent Defined:
 - Each reimbursable lunch shall be considered one (1) meal/meal equivalent; each reimbursable breakfast shall be considered one-half (1/2) of a meal/meal equivalent, and each reimbursable snack shall be considered one-third (1/3) of a meal/meal equivalent.
 - For non-reimbursable meals the number of meal equivalents shall be

determined by dividing the total of all sales except reimbursable meal sales (including cash for adult meals, a la carte meals and special functions or catering) by the approved free lunch reimbursement rate plus the per meal value of commodities for the current school year.

- G. Expenses paid by the FSMC and not charged to the LEA or the food service operation and are unallowable include:
- Reports filed to the State
 - Corporate income tax

6.2 Invoice Due Date. Invoices submitted to the LEA by the FSMC will be paid according to the LEA's "Accounts Payable Cut-Off Schedule," attached as Appendix ____ **[delete if not applicable]** If invoices are received in the LEA's Accounting Department by the cut-off date, and they pass audit, payment will be made on the release date listed on the schedule. The FSMC will be notified immediately of any invoice that does not pass audit. The LEA shall pay all amounts when due, but if the LEA does not make a payment when due, no interest shall be charged by the FSMC on that past due receivable.

6.3 Break-Even Guarantee. The LEA and the FSMC shall work together to ensure a financially sound and well-run operation. The FSMC shall guarantee that the food service program will achieve financial break-even, defined as "generated program revenues will be sufficient to cover all actual and direct operating costs incurred." Actual and direct operating costs are as described in paragraphs 6.1 A-B above. In the event that this financial result is not achieved, the FSMC shall reimburse the LEA an amount equal to the variance but not to exceed the total annual management fee.

6.4 Taxes. If during the term of this agreement any taxes are added or deleted, or there is a revision of an existing law or regulation such that the responsibility for any tax is shifted or altered, any of which results in increased or decreased costs to the FSMC, then the financial terms of this agreement shall be adjusted to reflect the change in cost retroactive to the commencement of the change. The obligations described in this paragraph shall survive any termination of this agreement, and will continue until the applicable statute of limitations, including legal extensions, has expired. The LEA and the FSMC shall agree to remain responsible for any:

- liability or assessment, including related interest and penalties, resulting from a tax responsibility of that party, and
- reasonable collection expense, attorney's fees, and costs incurred in connection with the collection of any such amount from that party.

Nothing herein is intended to absolve the FSMC from payment of city, state, or federal income taxes.

6.5 Operating Statements. The FSMC shall submit monthly operating statements to the LEA by the fifteenth (15th) of the next month. This statement shall reflect all activity for the previous calendar month.

6.6 Inspection of Books and Records. The books and records of the FSMC pertaining to operations under this agreement shall be available to the LEA at any reasonable time. These records are subject to inspection or audit by representatives of the LEA, State Agency, the US Department of Agriculture, and the US General Accounting Office at any reasonable time and place. The FSMC shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolution. §3016.36(i)(10) and 210.16(c)(1)

- 6.7 Renegotiation of Financial Terms. The renegotiation of price terms under this agreement is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of the parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this agreement are based, then those price terms so affected may be renegotiated by the parties pending approval from ADE. Renegotiation of price terms under such conditions must be mutual, and any changes in price terms must be agreed upon by both parties. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the agreement.
- 6.8 Availability of Funds. Every payment obligation of the LEA under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the LEA at the end of the period for which funds are available. No liability shall accrue to the LEA in the event this provision is exercised, and the LEA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

ARTICLE VII GENERAL TERMS AND CONDITIONS

- 7.1 Compliance With Law. The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies, regarding purchasing, sanitation, health, and safety of the food service operations. The FSMC will comply with all requirements of the National School Lunch Program, School Breakfast Program, After School Care Snack Program and Summer Food Service Program **[delete if not applicable]** and shall procure and maintain all necessary licenses and permits. The LEA shall cooperate, as necessary, for the FSMC's compliance and procurement efforts.
- 7.2 National School Lunch Program. In order to assist the LEA's participation in the National School Lunch Program:
- A. Any federally donated commodities received by the LEA and made available to the FSMC shall be used only for the benefit of the LEA's food service operation. Any commodity processing contracts shall be established by the LEA based on the ADE approved state contract. All goods, services, and monies received as a result of rebates and discounts under a processing contract must be used in the LEA's nonprofit food service. § 210.16 (a)(6). The FSMC shall maintain a perpetual inventory record of donated commodities. A system shall be established to determine the value of commodities credited to the LEA. In addition, the FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
 - B. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the LEA, or do not otherwise meet the requirements of this agreement. No deduction in payment shall be made by the LEA unless the LEA notifies the FSMC in writing within 48 hours of the meal service for which the deduction is to be made, specifying the number of meals for which a deduction is to be made and describing the reasons for the deduction. § 210.16 (c)(3). The FSMC accepts liability for any negligence on its part

for claims assessed as a result of federal and/or state reviews, corresponding with the period of liability for the LEA.

- C. The FSMC shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolutions, as are needed by the LEA to support its claims for federal and state reimbursements. The FSMC shall submit to the LEA a monthly meal reimbursement claim report for the LEA to submit to the Arizona Department of Education. §3016(i)(12), and 210.16 (c)(3).

- 7.3 Comprehensive Insurance. The FSMC shall obtain and keep in force during this agreement, for the protection of the LEA and the FSMC, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the combined single limit of no less than **<insert amount here>**. That insurance shall include, but not be limited to, Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability, and Products Liability, covering only the operations of the FSMC under this agreement, and shall deliver to the LEA a certificate evidencing such policies and coverage within thirty (30) days after the execution of this agreement by the parties. The insurance policies shall contain a covenant by the issuing company that the policies will not be canceled unless a thirty (30) day prior written notice of cancellation is given to the LEA. The policies for **<insert amount here>** coverage shall also name the LEA as an Additional Insured, but only with respect to operations of the FSMC under this agreement. **[delete if not applicable]**.
- 7.4 Waiver of Insurance Subrogation. Neither party has any obligation or responsibility for loss or damage to the other's real or personal property that is caused by fire, extended coverage perils, vandalism, or malicious mischief. The parties waive all rights of recovery against each other for loss or damage to the waiving party occasioned by any such peril insured against under any policies insuring the waiving party's real or personal property.
- 7.5 Indemnity. Unless otherwise expressly provided, the LEA and the FSMC shall remain responsible for all claims, liability, loss, and expense, including reasonable costs, collection expenses, and attorney's fees incurred, which arise by reasons of negligent or wrongful act or omission of the party, its agents, or its employees in the performance of its obligations under this agreement.
- 7.6 Trade Secrets. The FSMC shall designate any information it considers confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents which it regularly uses in the operation of the FSMC's business or which it develops independently during the course of this agreement. Information so designated and identified shall be treated as confidential by the LEA, and the LEA shall exercise the same level of care in maintaining the confidences of the FSMC as it would employ in maintaining its own confidences. All such recipes, files, records, compilations, manuals, and similar items shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of this agreement. The LEA shall have no right to the use trademarks, service marks, copyrights, or trade names of the FSMC following termination of this agreement. The FSMC shall remove all evidence of its trade names and registered trademarks within thirty (30) days after termination of this agreement.

Similarly, the LEA shall designate any information it considers confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents that it regularly uses in its operations or which it develops in the course of this contract. Information so designated and identified shall be treated as confidential by the FSMC, and the FSMC shall exercise the same level of care in maintaining the confidences of the LEA as it would employ in maintaining its own confidences. All such recipes, files, records, compilations, manuals, and similar items shall remain the exclusive

property of the LEA and shall be returned to the LEA immediately upon termination of this agreement. The FSMC shall have no right to the use trademarks, service marks, copyrights, or trade names of the LEA following termination of this agreement.

The FSMC shall retain copyright rights to any recipes, surveys and studies, management guidelines, operating manuals, and similar documents, that are developed pursuant to this agreement at the request of or through the funding provided by the LEA. Notwithstanding, the LEA shall retain royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for government purposes any such information and documents. § 3016.34.

- 7.7 Assignment. This agreement may not be assigned by either party, in whole or in part, without the written consent of the other party.
- 7.8 Notice. Any notice or communication required or permitted under this agreement shall be in writing and shall be served personally or sent by US registered or certified mail, postage prepaid and return receipt requested, addressed to the other party as follows:

Notices to the LEA:

Sample LEA
123 Sample Avenue
Sample Town, AZ 00000-0000

Notices to the FSMC:

Sample Food Service Management Company
123 Sample Street
Sample Town, State 11111-1111

Other persons or places may also be designated, in writing, by either of the parties, during the term of this agreement. Notices shall be effective when received. Sent notices will be considered received forty-eight (48) hours after they are deposited in the US mail.

- 7.9 Attorney's Fees. If any action or proceeding is necessary to enforce the provisions of this agreement, including any claim or demand, or to interpret this agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which it may otherwise be entitled, whether or not such action or proceeding is prosecuted to judgment.
- 7.10 Catastrophe. With the exception of payment obligations for prior performance under this agreement, neither party shall be liable for the failure to perform their respective obligations under this agreement when such failure is caused by fire, explosion, water, act of God or inevitable accident, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or other like causes beyond the reasonable control of the party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations as soon as possible.
- 7.11 Termination. If either party fails to comply with any of the obligations required of it in this agreement and, following receipt of written notice specifying that failure, fails to remedy such failure within a reasonable time not to exceed sixty (60) days, then the other party shall have the right to terminate this agreement immediately upon giving written notice of that intention. § 210.16 (d).
- 7.12 Cure Period. In either case, if a cure or remedy is found for the termination request by mutual agreement of the contracting parties, the termination or non-renewal letter must be withdrawn in writing by the terminating party within the sixty (60) day period as described in

paragraph 7.11 above. This letter should be counter-signed by the receiving party and the letter should become an amendment to this agreement.

- 7.13 Non-Renewal Notice. The LEA and the FSMC shall give no less than sixty (60) days written notice of the intention to renew this agreement.
- 7.14 Rights Beyond Termination. The right of termination referred to in this agreement is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity.
- 7.15 Construction and Effect. A waiver of any failure under this agreement shall neither be construed as, nor constitute a waiver of, any subsequent failure. This agreement supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendixes referred to herein are made part of this agreement by the respective references to them. This agreement may be executed in several counterparts, each of which shall be deemed an original.
- 7.16 Amendments to the Agreement. The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the agreement. The parties must mutually agree, in a written document signed by both parties and attached to this agreement, amend, add, or delete an Article or Appendix. Any amendment to this agreement shall become effective at the time specified in the amendment.
- 7.17 Sanctions. For breach of the agreement and associated benefits:
- A. The Arizona Department of Education shall be notified immediately of termination action and reason for termination.
 - B. The name of either party who has caused the breach shall be kept on record by the Arizona Department of Education for information and action if necessary when co-signing future agreements.
 - C. If the FSMC causes the breach, the FSMC assumes liability for any and all damages, including excess cost to the LEA in procuring similar services, and is liable for administrative, contractual, and legal remedies as applicable.
- 7.18 Cancellation of Contract. Pursuant to A.R.S. § 38-511, the LEA may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the LEA if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the LEA is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. A cancellation made pursuant to this provision shall be effective when the FSMC receives written notice of the cancellation unless the notice specifies a later time.
- 7.19 Disputes of Contract. Disputes arising under this Contract are subject to arbitration to the extent required by A.R.S. § 12-1518.
- 7.20 Antitrust Violations. The FSMC assigns to the LEA any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the FSMC toward fulfillment of this Contract.

7.21 Severability. In the event that any of the provisions, or portions thereof, of the agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

SO AGREED:

Signature of Food Service Management Company's
Authorized Representative

Title

Date

Signature of Local Education Agency's
Authorized Representative

Title

Date